

SENATE BILL 282

C2

2lr0570

By: **Chair, Finance Committee**

Introduced and read first time: January 26, 2012

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 14, 2012

CHAPTER _____

1 AN ACT concerning

2 **Office of Cemetery Oversight – Sunset Extension and Program Evaluation**

3 FOR the purpose of continuing the Office of Cemetery Oversight in accordance with
4 the provisions of the Maryland Program Evaluation Act (Sunset Law) by
5 extending to a certain date the termination provisions relating to statutory and
6 regulatory authority of the Office; exempting private family cemeteries that do
7 not conduct public sales from certain permitting and registration, perpetual
8 care, and preneed contract requirements of the Maryland Cemetery Act;
9 altering the membership of the Advisory Council on Cemetery Operations;
10 increasing the number of times the Advisory Council is required to convene each
11 year; requiring the Director of the Office of Cemetery Oversight to include
12 certain information regarding the number of registrants and permit holders in a
13 certain annual report; requiring the Director to provide a copy of certain annual
14 reports to each member of the Advisory Council; requiring the Director, at
15 certain times, to deliver to each member of the Advisory Council certain
16 paperwork; requiring the Advisory Council to respond to issues raised in certain
17 annual reports and develop a plan to study ongoing issues; authorizing a certain
18 registration to be transferred under certain circumstances; requiring a certain
19 annual report to include certain information on the number of inquiries received
20 by the Office; requiring an applicant for a permit to submit certain
21 documentation to the Director; requiring a certain disclosure to be made in a
22 certain manner; requiring the Office to provide a report on the implementation
23 of certain recommendations to certain committees of the General Assembly on
24 or before a certain date; requiring the Advisory Council to develop a plan for
25 consumer outreach, study recordkeeping practices for cemeteries in a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 manner, and develop a legislative proposal on recordkeeping practices;
 2 requiring the Director and the Advisory Council to develop certain orientation
 3 materials and study the issue of the increasing rate of cremations and its effect
 4 on the Office's finances; requiring the Director and a committee formed of
 5 members of the Advisory Council to update the Office newsletter and develop a
 6 certain plan for updating the newsletter; making stylistic and technical
 7 changes; and generally relating to the Office of Cemetery Oversight and the
 8 operation of cemeteries and burial goods businesses in the State.

9 BY repealing and reenacting, with amendments,
 10 Article – Business Regulation
 11 Section 5–102(a), 5–201(c), 5–204(i) and (l), 5–305(b), 5–311(h), 5–404,
 12 5–602(a), 5–702(a), 5–801, and 5–1002
 13 Annotated Code of Maryland
 14 (2010 Replacement Volume and 2011 Supplement)

15 BY adding to
 16 Article – Business Regulation
 17 Section 5–204(m) and 5–204.1
 18 Annotated Code of Maryland
 19 (2010 Replacement Volume and 2011 Supplement)

20 BY repealing and reenacting, without amendments,
 21 Article – State Government
 22 Section 8–403(a)
 23 Annotated Code of Maryland
 24 (2009 Replacement Volume and 2011 Supplement)

25 BY repealing and reenacting, with amendments,
 26 Article – State Government
 27 Section 8–403(b)(10)
 28 Annotated Code of Maryland
 29 (2009 Replacement Volume and 2011 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 31 MARYLAND, That the Laws of Maryland read as follows:

32 **Article – Business Regulation**

33 5–102.

34 (a) The registration and permitting provisions of this title do not apply to:

35 (1) a person that owns and operates a bona fide religious–nonprofit
 36 cemetery in this State;

1 (2) a cemetery owned by a not for profit organization created before
2 1900 by an act of the General Assembly;

3 (3) a county, city, or municipal corporation that owns and operates a
4 cemetery in the State; [or]

5 (4) a veterans' cemetery operated by the State; **OR**

6 **(5) A PRIVATE FAMILY CEMETERY THAT DOES NOT CONDUCT**
7 **PUBLIC SALES.**

8 5-201.

9 (c) (1) The Secretary shall appoint an Advisory Council on Cemetery
10 Operations.

11 (2) The Advisory Council consists of [eleven] **12** members.

12 (3) Of the [eleven] **12** members of the **ADVISORY** Council:

13 (i) three shall be registered cemeterians representing the
14 for-profit cemetery industry;

15 (ii) one shall be a registered cemeterian representing a
16 nonprofit cemetery;

17 (iii) one shall be a registered seller from a monument company;

18 (iv) one shall be a representative from a religious cemetery;

19 [and]

20 **(V) ONE SHALL BE A REPRESENTATIVE FROM A**
21 **CREMATORY; AND**

22 [(v)] **(VI)** five shall be consumer members.

23 (4) The Advisory Council shall be convened at least [once] **FOUR**
24 **TIMES** a year to give advice to the Secretary and the Director.

25 (5) In addition to the [annual meeting] **REQUIRED MEETINGS**, the
26 Advisory Council may meet as necessary.

27 5-204.

28 (i) (1) For each fiscal year, the Director shall maintain a list of:

- 1 (i) all registrants and permit holders;
- 2 (ii) all for-profit cemeteries and nonreligious-nonprofit
3 cemeteries associated with a registrant or permit holder; and
- 4 (iii) all bona fide religious-nonprofit cemeteries, veterans'
5 cemeteries, and local government-owned cemeteries that have filed a statement or
6 report required under §§ 5-405, 5-606, and 5-710 of this title.

7 (2) All lists maintained by the Director shall be open to inspection by
8 any person.

9 **(3) BASED ON THE LIST MAINTAINED BY THE DIRECTOR UNDER**
10 **PARAGRAPH (1)(I) OF THIS SUBSECTION, THE DIRECTOR SHALL INCLUDE IN**
11 **THE ANNUAL REPORT TO THE GENERAL ASSEMBLY REQUIRED UNDER**
12 **SUBSECTION (L)(3) OF THIS SECTION THE FOLLOWING INFORMATION AS OF**
13 **JUNE 30 OF THE YEAR THAT IS THE SUBJECT OF THE REPORT:**

14 **(I) THE TOTAL NUMBER OF REGISTRANTS AND PERMIT**
15 **HOLDERS; AND**

16 **(II) THE NUMBER OF REGISTRANTS AND PERMIT HOLDERS**
17 **FOR EACH LICENSING CATEGORY.**

18 (l) (1) Beginning with a report due on December 1, 2008, the Director
19 shall conduct an inventory of all known burial sites in the State and shall update the
20 inventory and report every 5 years to the General Assembly, in accordance with §
21 2-1246 of the State Government Article, on the number of for-profit cemeteries,
22 nonreligious-nonprofit cemeteries, bona fide religious-nonprofit cemeteries, veterans'
23 cemeteries, and local government-owned cemeteries.

24 (2) Beginning December 1, 2008, the Director shall annually assess
25 the rate of compliance with the registration, permit, and reporting requirements of
26 this title by comparing the lists required under subsection (i)(1)(ii) and (iii) of this
27 section with the most recent inventory of all known burial sites conducted under
28 paragraph (1) of this subsection.

29 (3) Beginning with a report due on January 31, 2009, for fiscal year
30 2008, the Director shall report annually to the General Assembly, in accordance with §
31 2-1246 of the State Government Article, on the implementation of an action plan, if
32 appropriate, to address any noncompliance issues identified by the assessment
33 required under paragraph (2) of this subsection.

34 **(4) THE DIRECTOR SHALL PROVIDE A COPY OF THE ANNUAL**
35 **REPORT REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION TO EACH**
36 **MEMBER OF THE ADVISORY COUNCIL.**

1 **(M) AT THE TIME OF APPOINTMENT OF NEW MEMBERS AND BEFORE**
2 **REAPPOINTMENT OF EXISTING MEMBERS OF THE ADVISORY COUNCIL, THE**
3 **DIRECTOR SHALL DELIVER TO EACH MEMBER THE PAPERWORK NECESSARY TO**
4 **DISCLOSE ANY INTEREST OR EMPLOYMENT HELD BY THE MEMBER AT THE TIME**
5 **OF APPOINTMENT AS REQUIRED BY THE MARYLAND PUBLIC ETHICS LAW.**

6 **5-204.1.**

7 **THE ADVISORY COUNCIL SHALL RESPOND TO ISSUES RAISED BY THE**
8 **DIRECTOR IN THE ANNUAL REPORT REQUIRED UNDER § 5-204 OF THIS**
9 **SUBTITLE AND § 5-311 OF THIS TITLE AND DEVELOP A PLAN TO STUDY**
10 **ONGOING ISSUES DURING THE YEAR FOLLOWING THE ISSUANCE OF THE**
11 **REPORT.**

12 **5-305.**

13 (b) A registration issued by the Director under this title [is not transferable]:

14 **(1) MAY NOT BE TRANSFERRED FROM ONE INDIVIDUAL TO**
15 **ANOTHER; BUT**

16 **(2) MAY BE TRANSFERRED FOR THE SAME INDIVIDUAL FROM ONE**
17 **CEMETERY TO ANOTHER.**

18 **5-311.**

19 (h) (1) The Director shall adopt guidelines that establish a schedule for
20 the prompt and timely processing and resolution of each complaint made to the
21 Director.

22 (2) Beginning December 31, 1998, and on or before December 31 of
23 each year thereafter, the Director shall report, subject to § 2-1246 of the State
24 Government Article, to the General Assembly on:

25 (i) the number of complaints resolved within the schedule
26 adopted under paragraph (1) of this subsection;

27 (ii) the number of complaints **AND THE NUMBER OF**
28 **INQUIRIES** received under subsection (c)(2) of this section by the type of registrant,
29 permit holder, or exemption from the registration and permit requirements of this
30 title;

1 (iii) the number of complaints **AND THE NUMBER OF**
 2 **INQUIRIES** received under subsection (c)(2) of this section by persons subject to, but
 3 not in compliance with, the registration and permit requirements of this title;

4 (iv) the nature of complaints **AND INQUIRIES** received under
 5 subsection (c)(2) of this section, including whether complaints are related to the illegal
 6 recycling of graves;

7 **(V) THE TYPE OF PURCHASE, FOCUS OF DISSATISFACTION,**
 8 **AND TYPE OF RESOLUTION FOR BOTH COMPLAINTS AND INQUIRIES;**

9 [(v)] **(VI)** whether complaints reported under item (i) of this
 10 paragraph were resolved through negotiation, binding arbitration, or another method;
 11 and

12 [(vi)] **(VII)** any disciplinary or enforcement actions taken against
 13 a registrant, permit holder, or a person subject to, but not in compliance with, the
 14 registration and permit requirements of this title.

15 **(3) THE DIRECTOR SHALL PROVIDE A COPY OF THE ANNUAL**
 16 **REPORT REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION TO EACH**
 17 **MEMBER OF THE ADVISORY COUNCIL.**

18 5-404.

19 An applicant for a permit shall submit to the Director:

20 (1) an application on the form that the Director provides; [and]

21 (2) an application fee as set by the Director; **AND**

22 **(3) DOCUMENTATION ~~SHOWING~~ VERIFYING THE NUMBER OF**
 23 **SALES CONTRACTS SUBJECT TO THE SALES CONTRACT FEE ENTERED INTO**
 24 **WITHIN THE BUSINESS' LAST TWO FISCAL YEARS.**

25 5-602.

26 (a) This subtitle does not apply to a cemetery that:

27 (1) has less than 1 acre available for burial; or

28 (2) is owned and operated by:

29 (i) a county;

30 (ii) a municipal corporation;

- 1 (iii) a church;
- 2 (iv) a synagogue;
- 3 (v) a religious organization;
- 4 (vi) a not for profit organization created before 1900 by an act of
5 the General Assembly; [or]

6 **(VII) A FAMILY AND DOES NOT CONDUCT PUBLIC SALES; OR**

7 **[(vii)] (VIII) a State veterans agency.**

8 5-702.

9 (a) This subtitle does not apply to:

- 10 (1) the sale of burial space; [or]
- 11 (2) a preneed contract made by an individual in connection with
12 practicing funeral direction or practicing mortuary science, as those practices are
13 defined in and regulated by the Health Occupations Article; **OR**

14 **(3) THE PRENEED SALE OF BURIAL GOODS OR SERVICES BY A**
15 **PRIVATE FAMILY CEMETERY THAT DOES NOT CONDUCT PUBLIC SALES OF**
16 **BURIAL GOODS OR SERVICES.**

17 5-801.

18 (a) At the time of entering into a contract with a consumer for the sale of
19 burial goods or services, registrants, permit holders, or any other person subject to the
20 provisions of this title shall make the following written disclosures:

- 21 (1) the itemized cost for each service performed under the contract;
- 22 (2) a list of services incidental to burial that are not covered by the
23 contract;
- 24 (3) a statement regarding the cemetery's policy on the use of
25 independent monument companies; and
- 26 (4) the name, address, and telephone number for the State Office of
27 Cemetery Oversight.

1 (b) **(1)** The disclosures **REQUIRED UNDER SUBSECTION (A)(1), (2), AND**
2 **(3) OF THIS SECTION** shall be conspicuously incorporated in the contract in 12–point
3 type.

4 **(2)** **THE DISCLOSURE REQUIRED UNDER SUBSECTION (A)(4) OF**
5 **THIS SECTION SHALL BE ON A FORM SEPARATE FROM THE CONTRACT AND MUST**
6 **BE SEPARATELY SIGNED AND DATED BY THE CONSUMER.**

7 (c) The disclosure must be signed and dated by the consumer.

8 (d) The consumer must be provided with a copy of the contract **AND A COPY**
9 **OF THE FORM REQUIRED UNDER SUBSECTION (B)(2) OF THIS SECTION** at the
10 time of purchasing the burial goods or services.

11 (e) The disclosure shall occur:

12 (1) not later than the first scheduled face–to–face contact with the
13 purchaser or party representing the purchaser; or

14 (2) if no face–to–face contact occurs, at the time of the execution of the
15 contract by the purchaser or party representing the purchaser.

16 (f) The Director [may], by regulation, **MAY** prescribe the form and wording
17 of the disclosure.

18 (g) If the purchase by the consumer includes a cemetery plot, the registered
19 cemeterian, permit holder, or any other person subject to the provisions of this title
20 shall provide the consumer with a copy of a location survey, performed by a licensed
21 land surveyor, which indicates the location of the purchased plot within the cemetery,
22 or by any other means approved by the Director.

23 (h) Registrants, permit holders, or any other person subject to the provisions
24 of this title shall provide each buyer or prospective buyer with a general price list for
25 the buyer or prospective buyer to keep which shall include:

26 (1) specific prices for:

27 (i) ground opening and closing;

28 (ii) extra depth interment;

29 (iii) interment of cremated remains; and

30 (iv) mausoleum entombment; and

31 (2) general price ranges for burial space or burial goods.

1 5–1002.

2 Subject to the evaluation and reestablishment provisions of the Maryland
3 Program Evaluation Act, the Office of Cemetery Oversight, the provisions in this title
4 relating to the Office, and all regulations adopted by the Office shall terminate and be
5 of no effect after July 1, [2013] **2023**.

6 **Article – State Government**

7 8–403.

8 (a) On or before December 15 of the 2nd year before the evaluation date of a
9 governmental activity or unit, the Legislative Policy Committee, based on a
10 preliminary evaluation, may waive as unnecessary the evaluation required under this
11 section.

12 (b) Except as otherwise provided in subsection (a) of this section, on or before
13 the evaluation date for the following governmental activities or units, an evaluation
14 shall be made of the following governmental activities or units and the statutes and
15 regulations that relate to the governmental activities or units:

16 (10) Cemetery Oversight, Office of (§ 5–201 of the Business Regulation
17 Article: July 1, [2012] **2022**);

18 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1,
19 2013, the Office of Cemetery Oversight shall report to the Senate Finance Committee
20 and the House Health and Government Operations Committee, in accordance with §
21 2–1246 of the State Government Article, on the implementation status of nonstatutory
22 recommendations of the Department of Legislative Services contained in the sunset
23 evaluation report dated October 2011.

24 SECTION 3. AND BE IT FURTHER ENACTED, That the Advisory Council on
25 Cemetery Operations shall:

26 (1) develop a plan to improve consumer outreach, including an
27 approach to disseminating the consumer information pamphlet to key locations
28 around the State, such as nursing homes, churches, the offices of estate lawyers,
29 consumer protection agencies of every county, and other locations;

30 (2) study recordkeeping practices for cemeteries in relation both to
31 best practices and for disaster preparedness, including pandemics and natural
32 disasters, with the intention of developing legislation to address this issue;

33 (3) develop a legislative proposal on recordkeeping practices for
34 introduction no later than the 2014 regular session of the General Assembly; and

1 (4) in developing the proposal under item (3) of this section, determine
2 the categories of cemeteries to which any recordkeeping requirements developed
3 should be applied and consider the possibility of phasing in requirements to limit the
4 economic impact on cemeteries.

5 SECTION 4. AND BE IT FURTHER ENACTED, That the Director of the Office
6 of Cemetery Oversight and the Advisory Council on Cemetery Operations shall:

7 (1) collaborate on the development of orientation materials for new
8 members appointed to the Advisory Council, which shall include information on the
9 requirements of the Public Ethics Laws applicable to Advisory Council members;

10 (2) study the issue of the increasing rate of cremations within the
11 death care industry, including whether the rate of cremations will continue to rise at
12 the same rate and the possible effect this trend may have on the Office's finances.

13 SECTION 5. AND BE IT FURTHER ENACTED, That the Director of the Office
14 of Cemetery Oversight and a committee formed of members of the Advisory Council on
15 Cemetery Operations shall update the Office newsletter and develop a plan to ensure
16 that the newsletter continues to be updated on a regular basis.

17 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 July 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.